

U.S. to Appeal Ruling Against Wiretapping

1/28/71

By Ken W. Clawson
Washington Post Staff Writer

The Justice Department said yesterday it would appeal a district court decision that prohibits wiretapping of domestic groups without a court order.

U.S. District Judge Damon J. Keith of Detroit ruled Monday that the Attorney General does not have the power to order electronic surveillance in domestic national security cases without prior court approval.

Keith ruled yesterday in Detroit that the government could have an additional ten days in which to file its appeal of the constitutionality of domestic wiretapping under the banner of international security.

On Monday Keith ruled that the government had to disclose to the defense evidence it had gained in a wiretap against one of three defendants charged with conspiring to bomb the Central Intelligence Agency office in Ann Arbor, Mich.

Keith acknowledged that the government could conduct surveillance of subversive activities carried out by foreign agents, but he said that similar rules did not apply to domestic groups that disagreed with the existing system of government.

Government lawyers said that if the ruling was left standing, the government could not eavesdrop on domestic groups suspected of subversive activities. They claimed in a brief filed with Judge Keith that surveillance of radical domestic groups is permitted without court approval under the 1968 crime bill.

An almost identical appeal is now being pursued by the Justice Department in the Ninth Circuit Court of Appeals in California. In this district court ruling, issued Jan.

Los Angeles, Judge W. Ferguson ruled that wiretaps without court

"unconstitutional"

because they "ride roughshod over numerous political freedoms which have long received constitutional protection."

In Michigan, Judge Keith said that the "executive branch of our government cannot be given the power or the opportunity to investigate and prosecute criminal violations under two different standards simply because the accused espouses views which are inconsistent with our present form of government."

He added that there is a "great danger" in equating a dissident domestic organization with an unfriendly foreign power. "It strikes at the very constitutional privileges and immunities that are inherent in United States citizenship," he said.

The defendants in the Michigan case are Lawrence R. Plamondon, 25, who was accused of bombing the Ann Arbor CIA offices on Sept. 29, 1968, and John Sinclair, 29, and John W. Forrest, 21, who are accused of conspiracy in the bombing.

All three are leaders of the White Panthers, an organization based in Ann Arbor that professes to believe that young people can be radicalized by rock music. Sinclair is currently serving a nine-year prison term in Michigan for conviction on marijuana charges.

Before the government decided to appeal to the circuit court, and possibly to the Supreme Court, Attorney General John N. Mitchell held extensive meetings with Robert C. Mardian, newly appointed chief of Justice's Internal Security Division, which is handling the White Panther case.

The outcome of the appeals court decision is especially important to the government, which reportedly has used wiretapping in the kidnap conspiracy case involving the Berrigan brothers and other Catholic antiwar activists.